

CALIFORNIA STATE PERSONNEL BOARD MEETING
801 Capitol Mall
Sacramento, California

www.spb.ca.gov

Public Session Location - Room 150
Closed Session Location - Room 141

MID-MONTH BOARD MEETING MINUTES

JANUARY 17, 2001

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

1. ROLL CALL

BOARD MEMBERS PRESENT:

Ron Alvarado, President
William Elkins, Vice President
Florence Bos, Member
Richard Carpenter, Member

2. REPORT OF THE EXECUTIVE OFFICER - Walter Vaughn

The Board was advised of the following:

- A. State Personnel Board staff is at the Veteran's Home in Barstow conducting the personnel audit requested by Senator John Burton.
- B. State Personnel Board staff will be meeting with California State Employees Association (CSEA) representatives concerning labor management recommendations on discrimination.
- C. Linda Brooks, Assistant Executive Officer, State Personnel Board has accepted the Chief Deputy Registrar position at the Contractor's State License Board.

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- D. State Personnel Board staff will meet with Agency this week to discuss the organizations strategic planning efforts.

3. REPORT OF THE CHIEF COUNSEL - Elise Rose

The Chief Counsel reported on:

Litigation:

California Supreme Court

- A. Edgerton v. State Personnel Board - California Supreme Court has denied petition for review in this case. Appellant had been terminated on drug charges. The State Personnel Board had upheld the termination, but the trial court, upheld by the appellate court, found that the chain of custody of the drug sample was not proven and overturned the dismissal.

California Courts of Appeal

- A. Siepel v. State Personnel Board - In an unpublished decision, the Third District Court of Appeal has upheld the State Personnel Board's decision sustaining termination of appellant by the California Highway Patrol based on his alleged public lewd conduct and dishonesty.
- B. Burks v. State Personnel Board - In an unpublished decision, the Fourth District Court of Appeal sustained trial court ruling that the State Personnel Board did not violate the Bagley Keene Act by deliberating in closed session upon a "Proposed Decision" in Mr. Burk's disciplinary appeal without giving him 24 hours notice that the matter would be discussed in closed session.

Superior Court Cases

- A. ACSA v. Department of Personnel Administration - The appellate court has requested supplemental briefing

in this case wherein ACSA challenged the validity of the Unit 8 Memorandum of Understanding (MOU) provisions that provide for a grievance/arbitration process to review discipline in lieu of the State Personnel Board (SPB). The trial court found the Unit 8 MOU provisions unconstitutional in that they did not provide for ultimate and meaningful review by the SPB of discipline taken against civil service employees and challenged by the SPB. The appellate court wants further briefing on whether the challenged provisions are still in effect.

- B. PECG v. State Personnel Board - PECG moved ex parte for entry of judgment on a denial of motion for summary adjudication of issues in this case wherein PECG challenges the constitutionality of limited term appointments. The denial of summary adjudication of the issues occurred in 1997, and PECG was seeking to preserve their right of appeal before the case is dismissed by the court for failure to prosecute. The court denied the ex parte motion.
- C. Armitage v. Franchise Tax Board/State Personnel Board Superior Court denied a writ in this case challenging the State Personnel Board's denial of a complaint challenging the appointment by way of transfer of an employee on grounds of illegality and favoritism.
- D. Punglia v. Caltrans/State Personnel Board - Superior Court denied writ challenging the State Personnel Board's decision sustaining a rejection during probation by Caltrans of an employee for performance problems.
- E. Villanueva v. California Department of Corrections/State Personnel Board - A trial court granted a writ overturning the State Personnel Board's split decision in this case overturning the dismissal of a CDC Correctional Officer who reported having had a dream about shooting prison administrators. The petitioner is contending that the petition was not properly served and a hearing on this issue is scheduled for the end of January 2001.

Other Matters

- A. State Employee Mediation Program - Volunteer mediator training took place last week and was highly acclaimed. Several new departments have participated in the training.
 - B. Department of Personnel Administration Respondent's Counsel Roundtable - State Personnel Board Chief Counsel Elise Rose has been invited to address the group on current SPB issues on January 18, 2001.
 - C. State Health Questionnaire - Departments have been informed that the Health Questionnaire that had been used for positions not requiring a physical examination (STD) has been revised to comply with changes to the Fair Employment and Housing Act (FEHA) that took effect January 1, 2001. Departments should no longer be utilizing the old questionnaire. They may utilize the revised version, or may choose to develop their own questionnaire that comports with the FEHA. The State Personnel Board is forming a task force to obtain input on the revised questionnaire and discuss possible alternatives.
4. REPORT ON LEGISLATION - Judy Balmain

The Board was advised of the following:

- A. The Select Committee on Government Oversight's hearing on the "Whistleblower Act" has been moved from February 6, 2001 to February 28, 2001.
- B. At the request of Judy Balmain, State Personnel Board and Casey Young, Public Employees Retirement System (PERS); Peter Mixon, attorney for PERS and Karen Brandt, Staff Council for the State Personnel Board will be looking at the issue of "Elimination of Time Limits for Employment of Retirees".

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- C. The State Personnel Board was updated on the status of its proposed legislation.

BOARD ACTIONS

5. STATE PERSONNEL BOARD SUMMARY MINUTES OF JANUARY 3, 2001

ACTION: Board adopted on January 17, 2001.

VOTE: Alvarado, Elkins, Bos, Carpenter - Aye.

6. ACTION ON SUBMITTED ITEMS

ACTION: See pages 15-16.

7. ADMINISTRATIVE LAW JUDGE CASES

On January 17, 2001, the Board adopted the following decisions presented by Elise Rose, Chief Counsel, California State Personnel Board.

VOTE: Alvarado, Elkins, Bos, Carpenter - Aye.

PETITIONS GRANTED

JANET L. HYATT, CASE NO. 00-0856P

Appeal from termination with fault

Department of Corrections

ACTION: Stipulation for settlement approved

CHIEF COUNSEL RESOLUTIONS

MONICA JURADO, CASE NO. 00-4034

Appeal from Dismissal

Department of Transportation

ACTION: Stipulation for settlement approved

FRANK GARCIA, CASE NO. 00-4106

Appeal from Official Reprimand

Department of Corrections

ACTION: Stipulation for settlement approved

PROPOSED DECISIONS

JOHN C. MINOR, CASE NO. 00-2928

Appeal to Clear Name after Separation from Temporary
Authorization Appointment

Department of General Services

ACTION: Temporary authorization appointment sustained

LISA E. GRAY, CASE NO. 00-2928

Appeal from Five-Percent Reduction in Salary for a Period
of 12 Months

Department of Motor Vehicles

ACTION: Administrative Law Judge' proposed decision
rejected by Board. Board to decide case itself

CHRISTINA SALAZAR, CASE NO. 99-5136

Appeal From Denial of Request for Reasonable
Accommodation

Employment Development Department

ACTION: Administrative Law Judge' proposed decision
rejected by Board. Board to decide case itself

KEVIN C. MARSHALL, CASE NO. 00-0257

Appeal From Five Day Suspension

Employment Development Department

ACTION: Five-day suspension sustained

GWENDOLYN L. DOBINE, CASE NO'S 99-3638 and 99-4681

Appeal from Suspension for Seven Days and From Dismissal
Employment Development Department

ACTION: Suspension for seven days revoked and dismissal
modified to a suspension of fourteen months

HIRAM J. CHANNELL, CASE NO. 00-1233

Appeal from 30 Working Days Suspension

California State University

ACTION: 30 working days suspension modified to a 15
working days suspension

LAVERNE V. TOLBERT, CASE NO. 00-0951

Appeal from Rejection during Probationary Period

Employment Development Department

ACTION: Rejection during probationary period is affirmed
and appeal denied

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MILAGROS G. MANGOSING, CASE NO. 00-0931

Appeal from Constructive Medical Termination

Department of California Highway Patrol

ACTION: Constructive medical termination with back pay
and reinstatement of back benefits granted

JUANITO SANTOS, CASE NO. 98-1416

Appeal from Dismissal

Department of Social Services

ACTION: Dismissal sustained

RACHEL CHAMBERS, CASE NO. 00-0331

Appeal from Denial of Request for Reasonable

Accommodation

Employment Development Department

ACTION: Denial of reasonable accommodation granted and
matter remanded to respondent

VERONICA ESPADA, CASE NO. 00-1391

Appeal from Denial of Request for Reasonable

Accommodation

State Compensation Insurance Fund

ACTION: Denial of reasonable accommodation granted

FLORENCIA CANDELARIO, CASE NO. 00-1806

Appeal from Two Step Reduction in Salary for 12 Months

Department of Developmental Services

ACTION: Two-step reduction in salary for 12 months
modified to one-step reduction in salary for six months

KANDY AGUILAR, CASE NO. 00-2778

Appeal from Dismissal

Department of Developmental Services

ACTION: Dismissal sustained

OTILIA CARAVEO, CASE NO. 00-1744

Appeal from Demotion from the Position of Parole Agent II
to

Department of Youth Authority

ACTION: Permanent demotion to Parole Agent I modified to
temporary demotion for one year

JOE R. VILLEGAS, CASE NO. 00-1311

Appeal from Dismissal

Department of Corrections

ACTION: Dismissal sustained

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PAUL L. MILLER, CASE NO. 00-0521

Appeal from Dismissal

Department of the Youth Authority

ACTION: Dismissal modified to a thirty-calendar day's suspension

GARY WAYNE, CASE NO. 00-1325

Appeal from Five Percent Reduction in Salary for 12 Months

Department of Corrections

ACTION: Submitted

TIM MCDERMOTT, CASE NO. 00-0521

Appeal from Official Reprimand

Department of Corrections

ACTION: Submitted

RICHARD PHILLIPS, SPB CASE NO. 99-2759

Appeal from Demotion from the Position of Principal Driver

Department of Motor Vehicles

ACTION: Demotion sustained

PETITIONS FOR REHEARING

ALLEN C. JACKSON III, CASE NO. 99-4783P

Appeal from 20 Working Days Suspension

Employment Development Department

ACTION: Petition for rehearing filed by appellant denied

GREGORY JEFFERSON, CASE NO. 99-0527

Appeal from Five Working Days Suspension

Franchise Tax Board

ACTION: Petition for rehearing filed by respondent granted

WILLIAM WILSON, CASE NO. 99-1661

Appeal from Dismissal

Department of Corrections

ACTION: Petition for rehearing filed by respondent denied

8. RESOLUTION RE NOTICE OF GOVERNMENT CODE SECTION 18671.1 EXTENSION.

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ACTION: See pages 17-20.

9. MISCELLANEOUS APPEALS DIVISION CASES

Withholds, Voided Appointments, Rule 211 Appeals,
Petitions for Rehearing)

On January 17, 2001, the Board adopted the following
decisions presented by Linda Brooks, Assistant Executive
Officer, California State Personnel Board.

VOTE: Alvarado, Elkins, Bos, Carpenter - Aye.

A. TY LEON, CASE NO. 00-2781

Classification: Youth Correctional Officer
Department of the Youth Authority

ACTION: GRANTED

B. MARIA P. DIAZ, CASE NO. 00-1991

Classification: Correctional Officer
Department of Corrections

ACTION: GRANTED

C. ADEWONU H. AKANDE, CASE NO. 00-2573

Classification: Correctional Officer
Department of Corrections

ACTION: GRANTED

D. FRANCIS M. ASTURIAS, CASE NO. 00-2571

Classification: Hospital Police
Officer I

State Personnel Board

ACTION: GRANTED

E. HERON A. GUZMAN, CASE NO. 00-2683

Classification: Correctional Officer
Department of Corrections

ACTION: GRANTED

F. STANLEY JOHNSON, CASE NO. 00-2004

Classification: Correctional Officer
Department of Corrections

ACTION: DENIED

G. TAUVA'A L. JOHNSON, CASE NO. 00-2723

Classification: Cadet, CHP
California Highway Patrol

ACTION: DENIED

- H. RICHARD R. PARKER, CASE NO. 00-0680
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED
- I. MICHAEL G. FERGUSON, CASE NO. 00-2195
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED
- J. RANDY A. STRATTON, CASE NO. 00-1649 Classification:
Correctional Officer
Department of Corrections
ACTION: DENIED
- K. ELISA GILL, CASE NO. 00-1955
Classification: Environmental Specialist II
Water Resources Control Board
ACTION: DENIED
- L. ERIKA TANNOYA, CASE NO. 00-1509
Classification: Youth Correctional Officer
Department of the Youth Authority
ACTION: DENIED
- M. TODD STOWERS, CASE NO. 00-1477
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED
- N. CHRISTOPHER MONSOUR, CASE NO. 00-3418
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED
- O. SAM BOYD, CASE NO. 00-2804
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED
- P. KYLE MUNSON, CASE NO. 00-3480
Classification: Youth Correctional Officer
Department of the Youth Authority
ACTION: DISMISSED

10. MEDICAL APPEALS

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On January 17, 2001, the Board adopted the following decisions presented by Linda Brooks, Assistant Executive Officer, California State Personnel Board.

VOTE: Alvarado, Elkins, Bos, Carpenter - Aye.

A. ALTHEA M. LOPEZ, CASE NO. 00-1849
Classification: Psychiatric Technician
Department of Mental Health
ACTION: DENIED

B. CARL D. CHAMBERS, CASE NO. 00-1614
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

11. EXAMINATION APPEALS

On January 17, 2001, the Board adopted the following decisions presented by Linda Brooks, Assistant Executive Officer, California State Personnel Board.

VOTE: Alvarado, Elkins, Bos, Carpenter - Aye.

A. COLETTE NOBLE, CASE NO. 99-1843
Classification: Deputy Commissioner I, Department
of Real Estate, Fresno
ACTION: DENIED

B. CLAIRE JOHNSON, CASE NO. 99-2407
Classification: Legal Counsel
California Public Utilities Commission
ACTION: DENIED

12. NON-HEARING CALENDAR

On January 17, 2001, the Board adopted item "A". This item was presented by Linda Brooks, Assistant Executive Officer, California State Personnel Board.

VOTE: Alvarado, Elkins, Bos, Carpenter - Aye.

BENEFIT PROGRAM SPECIALIST I (PUBLIC EMPLOYEES RETIREMENT SYSTEM)

BENEFIT PROGRAM SPECIALIST (CalPERS)

BENEFIT PROGRAM SPECIALIST II (PUBLIC EMPLOYEES RETIREMENT SYSTEM)

BENEFIT PROGRAM SPECIALIST III (PUBLIC EMPLOYEES RETIREMENT SYSTEM)

SENIOR BENEFIT PROGRAM SPECIALIST (CalPERS)

SUPERVISING BENEFIT PROGRAM SPECIALIST (PUBLIC EMPLOYEES RETIREMENT SYSTEM)

SUPERVISING BENEFIT PROGRAM SPECIALIST (CalPERS)

The California Public Employees Retirement System (CalPERS) proposes to revise the class of Benefit Program Specialist I (Public Employees Retirement System) to include an Alternate Range C, rename the class Benefit Program Specialist (CalPERS), and establish a one year probationary period for the class; to abolish the class of Benefit Program Specialist II (Public Employees Retirement System); to rename the Benefit Program Specialist III (Public Employees Retirement System) to Senior Benefit Program Specialist (CalPERS); to rename the Supervising Benefit Program Specialist (Public Employees Retirement System) to Supervising Benefit Program Specialist (CalPERS); and to revise the class series specification to update terminology, reflect the emphasis on customer service, the use of technology, and to better describe required experience in the minimum qualification.

13. CAREER EXECUTIVE ASSIGNMENT (CEA) CATEGORY ACTIVITY

A. REQUESTS TO ESTABLISH NEW CEA POSITIONS CURRENTLY UNDER CONSIDERATION

(1) CHIEF, CULTURAL RESOURCES DIVISION

The Department of Parks and Recreation proposes to allocate the above position to the CEA category. The Chief, Cultural Resources Division will oversee long-term planning for cultural resource protection, development and statewide policy, management of funding programs, and monitoring of cultural resources in the State Park System. The department indicates that the position will be at the second organizational level and will report directly to the Chief Deputy Director.

(2) CHIEF, LOAN PROGRAM OVERSIGHT DIVISION

The California Student Aid Commission proposes to allocate the above position to the CEA category. The Chief, Loan Program Oversight Division functions as a member of the Executive Staff. Provides high level, policy development, oversight and monitoring of the Commission's

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major and most complex programmatic areas - the student loan guarantee program. The department indicates that the position will be at the second organizational level and will report directly to the Chief Deputy Director.

(3) PROGRAM MANAGER, INNOVATIVE FINANCE

The Department of Transportation proposes to allocate the above position to the CEA category.

The Program Manager position provides administrative direction to the Comprehensive Caltrans Financial Management System Project, the Partnership Ventures Program, the Alternative Financing Program, and the AB1012 Loan Program, and is responsible for developing statewide departmental policies to establish and expand financing opportunities through loans, joint ventures, and other means as provided in state and federal laws and regulations. The department indicates that the position will be at the third organizational level and will report directly to the Finance Deputy Director.

(4) DEPUTY DIRECTOR, COMMUNITY OPERATIONS DIVISION

The Department of Developmental Services proposes to allocate the above position to the CEA category. The Deputy Director, Community Operations Division will be responsible for the leadership, management and accountability of 21 private (not-for-profit) corporations with which the department contracts for the delivery of lifelong services for approximately 160,000 persons with developmental disabilities in California. The position is also responsible for developing and implementing policies affecting 5,500 residential programs that serve developmentally disabled persons. The department indicates that the position will be at the second organizational level and will report directly to the Chief Deputy Director.

B. EXECUTIVE OFFICER DECISIONS REGARDING REQUESTS TO ESTABLISH NEW CEA POSITIONS

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- (1) SPECIAL ASSISTANT TO THE SECRETARY
The Business Transportation and Housing Agency's request to allocate the above position to the CEA category has been approved effective November 30, 2000.
- (2) CHIEF DEPUTY DIRECTOR
The Alcohol and Drug Programs request to allocate the above position to the CEA category has been approved effective December 1, 2000.
- (3) ASSISTANT DEPUTY DIRECTOR, ADMINISTRATION
The Department of Fish and Game's request to allocate the above position to the CEA category has been approved effective December 20, 2000.
- (4) DEPUTY DIRECTOR, ADMINISTRATIVE SERVICES (CHIEF ADMINISTRATIVE OFFICER)
The Community Services and Development's request to allocate the above position to the CEA category has been approved effective December 22, 2000.
- (5) ASSISTANT SECRETARY FOR FACILITIES PROGRAMS
ASSISTANT SECRETARY FOR DATA INTEGRATION
The California Environmental Protection Agency's request to allocate the above positions to the CEA category have been approved effective December 22, 2000.

C. REQUESTS TO REFILL CEA POSITIONS ESTABLISHED BETWEEN 6/30/95 AND 1/1/99

- (1) DEPUTY GENERAL COUNSEL
The California Public Employees' Retirement System is requesting to refill the above position.
- (2) CHIEF, MEMBER SERVICES DIVISION
The California Public Employees' Retirement System is requesting to refill the above position.

D. EXECUTIVE OFFICER DECISIONS REGARDING REQUESTS TO REFILL CEA POSITIONS ESTABLISHED BETWEEN 6/30/95 AND 1/1/99

(1) CHIEF, PROGRAM DEVELOPMENT AND MANAGEMENT
DIVISION

The Employment Development Department's request to request to refill the above position has been approved effective December 13, 2000.

(2) CHIEF OF CORPS MEMBER DEVELOPMENT AND PROJECT
SUPPORT DIVISION

The California Conservation Corps request to request to refill the above position has been approved effective December 22, 2000.

ACTION: Noted

A D J O U R N M E N T

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SUBMITTED

1. GABRIEL HERNANDEZ, CASE NO. 98-2868. Appeal from dismissal. Department of Mental Health. (Oral argument held September 6, 2000).

NO ACTION

2. WILLIAM SULLIVAN, CASE NO. 99-3904. Appeal from dismissal. Department of Corrections. (Oral argument held September 6, 2000).

ACTION: On January 17, 2001, adopted Board decision approving stipulation for settlement.

VOTE: Alvarado, Elkins, Bos, Carpenter - Aye.

3. DIANA HENNING, CASE NO. 98-4118/99-0772. Appeal from official reprimand/medical termination, demotion and transfer. Department of Corrections. (Oral argument held November 1, 2000).

NO ACTION

4. TERRANCE WILSON, CASE NO. 00-0836. Appeal from dismissal. Department of Corrections. (Oral argument held December 7, 2000).

NO ACTION

5. JOHN MEDEIROS, CASE NO. 99-4812. Appeal from dismissal. Department of Corrections. (Oral argument held December 7, 2000).

NO ACTION

6. LISANDRO DE HOYOS, CASE NO. 99-1478. Appeal from discrimination and retaliation. Department of Corrections. (Oral argument held December 8, 2000).

NO ACTION

7. DAVID PINSON, CASE NO. 99-5344P. Appeal from 5 working days suspension. Department of Corrections. (Oral argument held January 3, 2001).

NO ACTION

8. DENISE HALL, CASE NO. 00-0973. Appeal from discrimination complaint. Department of Veterans Affairs. (Proposed decision presented January 3, 2001).

ACTION: On January 17, 2001, Board adopted Administrative Law Judge's proposed decision.

VOTE: Alvarado, Elkins, Bos, Carpenter - Aye.

9. NANCY MACDONALD, CASE NO. 00-0723. Appeal from demotion. Department of Motor Vehicles. (Proposed decision presented January 3, 2001).

ACTION: On January 17, 2001, Board adopted Administrative Law Judge's proposed decision.

VOTE: Alvarado, Elkins, Bos, Carpenter - Aye.

10. CHARLES VILLATORO, CASE NO 00-1631. Appeal from 10 percent reduction in salary for the period of 12 months. (Proposed decision presented January 3, 2001).

ACTION: On January 17, 2001, Board adopted Administrative Law Judge's proposed decision.

VOTE: Alvarado, Elkins, Bos, Carpenter - Aye.

NOTICE OF GOVERNMENT CODE § 18671.1 RESOLUTION

Since Government Code section 18671.1 requires that cases pending

before State Personnel Board Administrative Law Judges (ALJ's) be completed within six months or no later than 90 days after submission of a case, whichever is first, absent the publication of substantial reasons for needing an additional forty-five days, the Board hereby publishes its substantial reasons for the need for the forty-five day extension for some of the cases now pending before it for decision.

An additional forty-five days may be required in cases that require multiple days of hearings, that have been delayed by unusual circumstances, or that involve any delay generated by either party (including, but not limited to, submission of written briefs, requests for settlement conferences, continuances, discovery disputes, pre-hearing motions). In such cases, six months may be inadequate for the ALJ to hear the entire case, prepare a proposed decision containing the detailed factual and legal analysis required by law, and for the State Personnel Board to review the decision and adopt, modify or reject the proposed decision within the time limitations of the statute.

Therefore, at its next meeting, the Board will issue the attached resolution extending the time limitation by 45 days for all cases that meet the above criteria, and that have been before the Board for less than 6 months as of the date of the Board meeting.

GOVERNMENT CODE § 18671.1 RESOLUTION

WHEREAS, Section 18671.1 provides that, absent waiver by the appellant, the time period in which the Board must render its decision on a petition pending before it shall not exceed six months from the date the petition was filed or 90 days from the date of submission; and

WHEREAS, Section 18671.1 also provides for an extension of the time limitations by 45 additional days if the Board publishes substantial reasons for the need for the extension in its calendar prior to the conclusion of the six-month period; and

WHEREAS, the Agenda for the instant Board meeting included an item titled "Notice of Government Code § 18671.1 Resolution" which sets forth substantial reasons for utilizing that 45-day extension to extend the time to decide particular cases pending before the Board;

WHEREAS, there are currently pending before the Board cases that have required multiple days of hearing and/or that have been delayed by unusual circumstances or by acts or omissions of the parties themselves;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the time limitations set forth in Government Code section 18671.1 are hereby extended an additional 45 days for all cases that have required multiple days of hearing or that have been delayed by acts or omissions of the parties or by unusual circumstances and that have been pending before the Board for less than six months as of the date this resolution is adopted.

* * * * *

I hereby certify that the State Personnel Board made and adopted the preceding resolution at its meeting on January 17, 2001.

WALTER VAUGHN
Executive Officer
California State Personnel Board

VOTE: Alvarado, Elkins, Bos, Carpenter - Aye.